

AN ORDINANCE

BY COUNCILMEMBER ANNE FAUVER

AN ORDINANCE GRANTING TO PIEDMONT DRIVING CLUB EASEMENTS ACROSS REAL PROPERTY OWNED BY THE CITY OF ATLANTA IN FULTON COUNTY, TO PROVIDE FOR SANITARY AND STORM SEWER SERVICE AND FOR LIFE SAFETY SIDEWALK ACCESS AT PIEDMONT PARK, AND FOR A RIGHT OF ENTRY AGREEMENT ALLOWING PIEDMONT DRIVING CLUB ACCESS ACROSS CITY PROPERTY FOR RETAINING WALL MAINTENANCE; AUTHORIZING THE MAYOR OR HER DESIGNEE TO EXECUTE APPROPRIATE INSTRUMENTS TO EVIDENCE THE GRANTING OF SUCH EASEMENTS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the "City") owns property located in Land Lots 54 and 55 of the 17th District, Fulton County (the "Grantee Property; and

WHEREAS, the Piedmont Driving Club (the "PDC") is in need of three (3) easements across the Grantee property for the purposes tying into existing sanitary and storm sewer connections, as well as accessing a sidewalk for life safety as required by the current City fire code; and

WHEREAS, the PDC is in need of a right of entry agreement to allow the PDC to access City property in order to perform repairs and maintenance to a retaining wall that is located on PDC's property;

WHEREAS, as consideration and payment for these easements, PDC has agreed to install three (3) security cameras to be located in or around the Grantee Property and pay for the service and maintenance of said security cameras for a period of two (2) years from the date the easements are executed; and

WHEREAS, the Department of Parks, Recreation and Cultural of the City recommends that this transaction is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ATLANTA GEORGIA, as follows:

Section 1. That the easements are hereby granted to PDC with the right and privilege to go in, upon, along, across and under that tract of land owned by the City of Atlanta in Land Lots 54 and 55 of the 17th district of Fulton County, Georgia, the exact location of the easements (hereinafter "Easement Area") being shown in detail on Exhibit A attached hereto and made a part hereof by reference, for the purpose of tying into existing sanitary and storm sewer connections and for access to a sidewalk for life safety purposes as required by the existing City fire. The City grants to PDC the right and privilege to construct, install, lay, maintain, inspect, test, operate, repair, replace, alter, renew, rebuild, reconstruct, upgrade, enhance, change, patrol, add and remove, in, upon, under, and above the Easement Area pipes, mains, equipment, cables, lines, conduits, valves, regulators, meters, anodes, fittings, markers, cathodic protection facilities, regulator stations, and data and voice transmission lines, of every nature and description, together with related machinery, apparatus, equipment, fixtures, improvements, appurtenances and facilities.

Section 2. That the Mayor or her designee be and hereby is authorized to execute on behalf of the City of Atlanta, appropriate instruments to evidence the granting of above said easements on behalf of the City of Atlanta, and that the Mayor or her designee is hereby authorized to execute on behalf of the City of Atlanta a right of entry agreement for the purposes described herein.

Section 3. That the City Attorney be and hereby is directed to prepare appropriate instruments to evidence said easements and right of entry agreement, for execution by the Mayor.

Section 4. That the easements and the right of entry agreement shall not become binding upon the City, and the City shall incur no obligation or liability thereunder until the instruments evidencing same have been signed by the Mayor and delivered to PDC.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same hereby are repealed.

SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of November, 2008, by and between CITY OF ATLANTA, a municipal corporation and political subdivision of the State of Georgia ("Grantor"), and the PIEDMONT DRIVING CLUB, a non-profit corporation of the State of Georgia ("Grantee").

Recitals

A. Grantor is the owner of the tract of land in Land Lot 54 of the 17th District of Fulton County, Georgia as depicted on Exhibit "A" attached to this Agreement and more particularly described in Exhibit "B" attached to this Agreement (the "Easement Area").

B. Grantee desires an easement in order to tie into an existing sewer line.

C. This easement is necessary to enable to maintain, operate and repair the sanitary sewer line (the "Sanitary Sewer").

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein and made a part of this Agreement, the sum of Ten Dollars in hand paid by each of the parties to the other, and for other good and valuable consideration, including the mutual covenants hereinafter set forth, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grantor hereby declares, establishes, creates and grants to Grantee a nonexclusive perpetual easement for the maintenance, operation and repair of the Sanitary Sewer on, across and through the Easement Area.

2. Grantor shall have no maintenance, operation or repair obligations in connection with the Sanitary Sewer or Easement Area. All maintenance, operation or repair obligations to the Sanitary Sewer or Easement Area shall be performed by Grantee, at its sole cost and expense, and shall be performed in compliance with all applicable governmental requirements prescribed by the Grantor. Any entry upon the Easement Area to perform any such maintenance, operation or repair shall be done in such a manner as to minimize, to the extent reasonably possible, any interruption and interference to the normal operation of the Easement Area, as well as the normal operation of Grantor's adjoining property and the improvements located thereon; provided, however, that no

maintenance, operation or repair within the Easement Area shall be performed until: (a) Grantee submits to Grantor plans, specifications and schedules for the maintenance, operation or repair of the Sanitary Sewer within the Easement Area that it proposes to perform; and (b) such plans, specifications and schedules for the proposed inspection, maintenance, repair or replacement shall be approved in writing by the Grantor. Such approval shall not be unreasonably withheld, conditioned, or delayed. In the event Grantee should fail or refuse to maintain, operate or repair the Sanitary Sewer or Easement Area as necessary to keep the Sanitary Sewer or Easement Area in good repair and in a sound and functional condition, Grantor shall have the right, after thirty (30) days' notice to Grantee, to enter the Easement Area and perform such maintenance or repair and in which event Grantee shall reimburse Grantor on demand for any such costs and expenses incurred by Grantor under such circumstances.

3. Any maintenance, operation or repair performed hereunder shall be performed in a good and workmanlike manner, in accordance with any applicable approved plans and specifications, and in accordance with all applicable governmental requirements prescribed by Grantor. Once commenced, such work shall be diligently pursued to completion and shall be completed within a reasonable time, subject to delays caused by matters beyond the reasonable control of the party performing such work. Upon completion of the work, the area affected by such work shall promptly be restored, as nearly as possible, to its condition prior to such work.

4. Grantor shall have the right at any time and from time to time to inspect any maintenance, operation or repair performed by Grantee within the Easement Area. In the event Grantor shall perform any such inspection and determine that any such maintenance, operation or repair performed by Grantee is not in compliance with this Agreement and Grantee fails or refuses to correct such deficiency within thirty (30) days after receiving notice thereof from Grantor, then Grantor shall have the right to correct such deficiency and in which event Grantee shall reimburse Grantor on demand for any costs and expenses incurred by Grantor in correcting such deficiency.

5. During the term of this Agreement, Grantee shall not hinder or interfere with Grantor's right to use the Easement Area. Grantee shall cause any permitted use and work performed by Grantee upon, across or through the Easement Area to be done without damaging, disrupting or otherwise interfering with the condition, use or operation of: (i) any portion of Grantor's property outside of the Easement Area; and (ii) any underground utilities located within the Easement Area (collectively, the "Protected Property"). Without limiting any other rights and remedies Grantor may have, in the event Grantee fail or refuse, after written notice from Grantor and a reasonable opportunity to cure, to properly repair any damage to any Protected Property caused by Grantee, Grantor shall have the right, but not the obligation, to repair such damage at the Grantee's expense, and Grantee shall promptly reimburse Grantor upon demand for such

costs and expenses incurred; provided that, in the event of any emergency, no prior notice to Grantee shall be required and Grantor shall be permitted to repair immediately such damage at the Grantee's expense.

6. Grantor reserves, for itself: (i) the right of non-exclusive access over, in, through and across the Easement Area; and (ii) the non-exclusive right to access the Easement Area to install, operate, maintain, locate, repair and/or replace any utility facility over, in, through and across the Easement Area. In the event the Grantor shall install, operate, maintain, locate, repair and/or replace any utility facility over, in, through or across the Easement Area, Grantor shall cause any such work to be done without damaging, disrupting or otherwise interfering with the condition, use, or operation of the Sanitary Sewer; provided, however, that Grantor shall promptly repair any damage to the Sanitary Sewer and/or Easement Area caused by Grantor.

7. All notices, demands or requests required or permitted to be given pursuant to this Agreement shall be given in writing and shall be deemed to have been properly given or served and shall be effective upon being deposited in the United States mail, postage prepaid for mail by registered or certified mail with return receipt requested, or in the alternative by express mail or courier; provided, however, that the time period in which a response to any notice, demand or request must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of address changes of which no notice has been given shall constitute receipt of the notice, demand or request sent. Any such notice, demand or request shall be sent to the respective address as follows:

As to Grantor:

City of Atlanta
Department of Parks Recreation and Cultural Affairs
City Hall South
Suite #801
Atlanta, Georgia 30309
Attn: Commissioner Dianne Harnell-Cohen

with copies to:

City of Atlanta
Attn: Mayor
55 Trinity Avenue
Atlanta, Georgia 30335